IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,   )
)
      Plaintiff,   )
)
      v.   )   Case No. 04-CR-40019-JPG
)
VON EASLEY,   )
)
      Defendant.   )

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court on Easley's Motion for Production of Sentencing Transcripts (Doc. 51). For the following reasons, this motion will be **DENIED**.

At the outset, it is important to note that transcripts of Easley's sentencing have not been prepared. Easley has a right to a transcript under limited circumstances. This right is dependent upon: (1) whether he can establish that he is indigent, and (2) whether the transcript is needed to decide an issue presented by a pending and non-frivolous action. *See* 28 U.S.C. § 753(f). These requirements do not violate the Constitution. *See United States v. McCollum*, 426 U.S. 317 (1976).

In this case, Easley has no pending matter before this Court. This Court, therefore, is unable to certify that the petitioner is pursuing a matter that is not frivolous or that transcripts are needed to decide the issue or issues presented by such a matter. *United States v. Hovarth*, 157 F.3d 131, 132 (2d Cir. 1998) (*per curiam*) (motion for free transcript not ripe until filing of § 2255 challenge to sentence); *Chapman v. United States*, 55 F.3d 390, 390-91 (8th Cir. 1995) (*per curiam*) (denial of transcript justified prior to filing of § 2255 challenge to sentence). If, at some point, the defendant should have an action pending before this Court, he may resubmit his request for free transcripts. At such time, the defendant will have the burden to establish (1) that he is indigent (such as by

submitting an affidavit and a record of his prison trust fund account for the last six-months), and (2)

that the transcripts are needed to decide a pending non-frivolous motion.

CONCLUSION

Easley's motion (Doc. 51) is **DENIED**.

IT IS SO ORDERED.

Dated: April 20, 2006.

       /s/ J. Phil Gilbert
       J. PHIL GILBERT
       U.S. District Judge